THIS REPORT IS NOT A FINAL ORDER OF DISCIPLINE*

DISTRICT OF COLUMBIA COURT OF APPEALS
BOARD ON PROFESSIONAL RESPONSIBILITY

Issued
December 20, 2018

In the Matter of:	:	
	:	
SHARON STYLES-ANDERSON,	:	D.C. App. No. 17-BG-228
	:	Board Docket No. 17-BD-014
Respondent.	:	Disc. Docket No. 2017-D010
	:	
A Suspended Member of the Bar of the	:	
District of Columbia Court of Appeals	:	
(Bar Registration No. 412158)	:	

REPORT AND RECOMMENDATION OF THE
BOARD ON PROFESSIONAL RESPONSIBILITY

In January 2017, Respondent and the Virginia State Bar entered an Agreed Disposition based on factual stipulations, and pursuant to which Respondent was suspended from the practice of law in Virginia for 15 months for violating several Virginia Rules of Professional Conduct, including Rules 1.15(a) and 8.4(c). Based on the Virginia matter, and under D.C. Bar R. XI, § 11(d), the Court of Appeals suspended Respondent on an interim basis on April 14, 2017, and Respondent filed the affidavit required by D.C. Bar R. XI, § 14(g) on September 15, 2017. On July 23, 2018, the Court referred this matter to the Board to determine the proper sanction.

Respondent argues in favor of identical reciprocal discipline, but Disciplinary Counsel argues for disbarment. There is a rebuttable presumption that identical discipline will be imposed in reciprocal discipline matters unless an exception applies. *See* D.C. Bar R. XI, § 11(c); *In re Zilberberg*, 612 A.2d 832, 834 (D.C. 1992). Disciplinary Counsel asserts that the "misconduct established [in Virginia] warrants substantially different discipline in the District of Columbia." D.C. Bar R.

*Consult the 'Disciplinary Decisions' tab on the Board on Professional Responsibility's website (www.dcattorneydiscipline.org) to view any subsequent decisions in this case.

XI, § 11(c)(4). Disciplinary Counsel bears the burden of proving by clear and convincing evidence that this exception applies. *In re Jacoby*, 945 A.2d 1193, 1198 (D.C. 2008) (Disciplinary Counsel may rely on "the 'substantially different discipline' exception in arguing for a greater sanction.").

The Board considered the parties' filings and for the reasons below, finds that Disciplinary Counsel has not met its burden.[1] Thus, the Board recommends that the Court impose identical reciprocal discipline of a 15-month suspension (application of the discipline because of a current suspension in another matter discussed in Section II.E below).

FACTUAL SUMMARY

We incorporate by reference the Stipulations of Fact in the January 12, 2017, Agreed Disposition between Respondent and the Virginia State Bar (*In re Styles-Anderson*, VSB Docket No. 16-052-104305) (attached) and summarize the facts below.[2]

Respondent's Unauthorized Practice of Law. Respondent is a member of the D.C. Bar, but not the Virginia Bar. In 2015 she represented M.J., a juvenile, in a criminal matter pending in the Juvenile and Domestic Relations Court for Fairfax County, Virginia. Stip. ¶¶ 1-2. On September 8, 2015, Respondent appeared,

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[1] The filings included Disciplinary Counsel's Statement Regarding Reciprocal Discipline, Respondent's Motion for Imposition of a 15-Month Reciprocal Suspension, Disciplinary Counsel's Opposition thereto, and Respondent's Supplemental Response to Disciplinary Counsel's Opposition (all of which were filed with the Court), and Disciplinary Counsel's Statement Regarding Reciprocal Discipline ("ODC Statement"), and Respondent's Response thereto (both of which were filed with the Board).

[2] The factual summary cites the numbered paragraphs in the attached Stipulations of Fact.

unaccompanied by local counsel, in arraignment court in Virginia on behalf of M.J. Stip. ¶ 5. On an Appearance of Counsel form, Respondent entered her D.C. Bar number in the blank reserved for the "Virginia State Bar No.," but did not identify it as her D.C. Bar number. Stip. ¶¶ 5-6. Following the arraignment, Respondent engaged in plea discussions with the prosecution, and appeared at a telephonic hearing, without local Virginia counsel. Stip. ¶¶ 7-9.

On October 6, 2015, after sending Respondent a plea offer, the prosecutor asked Respondent if she was licensed in Virginia. Respondent disclosed for the first time that she was not, and the prosecutor told her that she could not "do anything" in the case, including appearing the next afternoon at a hearing, unless associated with Virginia counsel. Stip. ¶¶ 11-12.

Respondent then approached two Virginia lawyers to serve as her local counsel. Respondent understood that each had agreed to serve as local counsel; but both prospective local counsel denied any such agreement.[3] One prospective local counsel, Ms. O'Connell, appeared at the motions hearing, but declined to enter an appearance. Stip. ¶ 21. The Virginia court appointed two other lawyers to serve as counsel and guardian ad litem, respectively. Stip. ¶ 22. M.J.'s parents subsequently discharged Respondent and hired new counsel. Stip. ¶ 27.

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[3] The Agreed Disposition has no finding that Respondent lied when she said that she believed that she had local counsel who agreed to sponsor her admission. The stipulated facts reflect that those involved had different recollections on this issue and are silent on whether Respondent's proffered understanding was mistaken or a misrepresentation. *See, e.g.*, Stip. ¶¶ 13, 19-20.

Respondent admits that she never disclosed to the Virginia court that she was not a Virginia attorney and "affirmatively misrepresented her status as a non-Virginia attorney when she filed her Appearance of Counsel." Stip. ¶ 28.

Respondent's Handling of Entrusted Funds. Respondent's retainer agreement with M.J.'s parents included the following provision:

> I will require a retainer/deposit of $5,000 to undertake this representation. This retainer . . . is non-refundable. You specifically waive any issue of a deposit of fees or removal of fees from any escrow/attorney accounts, and specifically agree to forgo the option of depositing the fee into an escrow account. By remitting the fee, you consent to an arrangement by which the fee will be treated as the property of Counsel.

Stip. ¶ 3 (alteration in original). Respondent collected $5,750 in legal fees, at least $5,000 of which were advanced legal fees. Stip. ¶ 4. Respondent did not deposit the advanced fees into a trust account. *Id*. After discharging Respondent, M.J.'s parents retained counsel to recover the fees. Stip. ¶ 31. On October 15, 2015, Respondent sent counsel a check for $6,250 from her personal account.[4] Stip. ¶ 32. The check was dishonored because of insufficient funds, and it took Respondent several months to pay the refund. Stip. ¶¶ 32-33.

Respondent's misconduct. Respondent agreed that her misconduct violated Virginia Rules of Professional Conduct: 1.3(a), 1.15(a), 1.15(b), 1.16(a), 1.16(d), 5.5(c), 5.5(d), 8.4(a), 8.4(b), and 8.4(c).

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[4] The $6,250 was a full refund of the fees paid, plus the fees due to the lawyer retained to recover the fees from Respondent. The Stipulations of Fact did not include the amount earned by Respondent for the work performed, and it does not appear that Respondent ever sought to retain any portion of the fees as earned.

I. Standard of Review.

D.C. Bar Rule XI, § 11 "creates a rebuttable presumption that the discipline will be the same in the District of Columbia as it was in the original disciplining jurisdiction." *Zilberberg*, 612 A.2d at 834. Section 11(c) provides exceptions, and Disciplinary Counsel argues that Respondent should be disbarred under the fourth exception which allows for the imposition of non-identical discipline when the "misconduct established warrants substantially different discipline in the District of Columbia." D.C. Bar R. XI, § 11(c)(4). "Evidence to support the exception must be 'clear and convincing,' that is, evidence that 'will produce . . . a firm belief or conviction as to the facts sought to be established.'" *In re Lebowitz*, 944 A.2d 444, 455 (D.C. 2008) (appended Board Report) (quoting *In re Cater*, 887 A.2d 1, 24 (D.C. 2005) (alteration in original)). "[R]eciprocal discipline proceedings are not a forum to reargue the foreign discipline." *In re Zdravkovich*, 831 A.2d 964, 969 (D.C. 2003).

Application of the exception under Section 11(c)(4) requires a two-step inquiry. *Jacoby*, 945 A.2d at 1199-1200; *In re Garner*, 576 A.2d 1356, 1357 (D.C. 1990) (per curiam). *First*, we "must determine if the misconduct would not have resulted in the same punishment here as it did in the disciplining jurisdiction." *Jacoby*, 945 A.2d at 1199-1200. The "'[s]ame punishment' is defined as a sanction 'within the range of sanctions that would be imposed for the same misconduct.'" *Id.* (citation omitted). *Second*, if the discipline in this jurisdiction would be different

from that imposed by the original disciplining court, the difference must be "substantial." *Id.* (citing *In re Demos*, 875 A.2d 636, 642 (D.C. 2005)).

Disciplinary Counsel argues that disbarment is warranted because of Respondent's misappropriation of an unearned fee, her "brazen unauthorized practice of law," and her pattern of dishonesty to a tribunal, the prosecutor and other attorneys intended to cover up her unauthorized practice of law.[5] We discuss each below.

II. Respondent's Misconduct.

A. Disciplinary Counsel Failed to Prove by Clear and Convincing Evidence that Respondent's Misconduct in Virginia Constituted Non-Negligent Misappropriation.

Disciplinary Counsel argues that Respondent's misconduct in Virginia constitutes non-negligent misappropriation and, under *In re Addams,* the presumptive sanction is disbarment. 579 A.2d 190, 191 (D.C. 1990) (en banc). To begin, the Board finds dispositive that the Virginia record includes no finding on Respondent's culpability or state of mind with the admitted misappropriation. As the Court held in *Zilberberg*, "the lack of such a finding is crucial- and . . . dispositive." 612 A.2d at 834; *id.* at 835 (applying the presumption of identical discipline and noting that when "the existing record from the original disciplining jurisdiction is insufficient [to overcome the presumption] then the record must be augmented before a greater sanction may be imposed.").

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[5] Disciplinary Counsel argues that each of these violations would warrant disbarment or at least a suspension with fitness. ODC Statement at 5-6.

Despite the lack of factual findings on state of mind, Disciplinary Counsel argues that the record supports a finding of non-negligent misappropriation. The Board addresses each of Disciplinary Counsel's arguments in the context of these questions: does the record show by clear and convincing evidence that Respondent engaged in "unauthorized use of client funds" entrusted to her and, if yes, was Respondent's unauthorized use of entrusted funds reckless or intentional, warranting disbarment under *Addams*. *See, e.g.*, *In re Anderson*, 778 A.2d 330, 335 (D.C. 2001) (*"Anderson I"*) (describing the proof needed for misappropriation and sanction for non-negligent misappropriation); *see also In re Grossman*, 940 A.2d 85, 86-87 (D.C. 2007) (per curiam) (the first step of the "substantially different discipline" analysis, requires a determination of the sanction that would be imposed in the District of Columbia if the conduct had occurred here).

1. Respondent Engaged in the Unauthorized Use of Entrusted Funds When She Treated the Advanced Fees as Her Own Before the Fees Had Been Earned.

The Virginia record does not specifically describe Respondent's unauthorized use of entrusted funds. Based on the stipulated facts, there is clear and convincing evidence that Respondent did not deposit the funds into a trust account.[6] But the

[6] Respondent's retainer agreement reflects consent from M.J.'s parents to allow her to treat the fee advance as her funds when paid, but Respondent does not argue that her conduct in Virginia complied with D.C. Rule 1.15(e), which permits an attorney to treat an advance fee as her own property with "informed" client consent. The stipulated facts in the Virginia proceeding do not establish that Respondent received the informed consent required by *In re Mance*, as there is no evidence M.J.'s parents were "aware of the attorney's obligation to refund any amount of advance funds to the extent that they are unreasonable or unearned if the representation is terminated by the client," or were "informed that, unless there is agreement otherwise, the attorney must, under

Virginia record does not include account balance information or other facts to show that the entrusted funds, held outside of a trust account, were used. *See In re Micheel*, 610 A.2d 231, 233 (D.C. 1992) ("Depositing client funds into an attorney's operating account constitutes commingling; misappropriation occurs when the balance in that account falls below the amount due to the client.").

That said, Respondent agreed that she violated Virginia Rule 1.15(b)(5), which provides that a lawyer "shall not disburse funds or use property of a client or third party without their consent or convert funds or property of a client or third party, except as directed by a tribunal." Based on our review of Virginia disciplinary cases, Rule 1.15(b)(5) codifies the "unauthorized use" concept present in District of Columbia misappropriation cases. *Compare In re Shedlick*, VSB Dkt. No. 18-053-109901, *et al.*, at 2-3 (Va. State Bar, Fifth District, Section III Subcommittee, May 22, 2018) (Rule 1.15(b)(5) violated when the balance in the lawyer's trust account fell below the amount due to a medical provider), *with In re Bailey*, 883 A.2d 106, 121-22 (D.C. 2005) (D.C. Rule 1.15(b)—now 1.15(c)—violated when the balance in the lawyer's trust account fell below the amount due to medical providers); *see also In re Andrews*, VSB Dkt. No. 13-080-095570, at 7-8 (Va. State Bar, Disciplinary Board, Mar. 13, 2018) (transferring entrusted funds to entities unrelated to the client violated Virginia Rule 1.15(b)(5)); *In re Jones*, VSB Dkt. No. 13-033-

[D.C.] Rule 1.15([e]), hold the flat fee in escrow until it is earned by the lawyer's provision of legal services." *In re Mance*, 980 A.2d 1196, 1206-07 (D.C. 2009).

093486, at 2-3 (Va. State Bar, Fifth District Subcommittee, Feb. 10, 2014) (Rule 1.15(b)(5) violated when attorney used entrusted funds to pay credit card fees).

Respondent's admission to violating Rule 1.15(b)(5) is consistent with statements in her Supplemental Response to Disciplinary Counsel's Opposition that she treated the advance fees as her own before they were earned. On pages 13-14, she asserts that "based on her hourly rate of $350.00 per hour, Respondent considered the funds earned *by the time the request for reimbursement was made*." (emphasis added). Similarly, on page 14, she argues that "using funds *deemed earned* was not malicious and purposefully done to violate the rules." (emphasis added). Fairly read, these are concessions that all the funds had not actually been earned when she used them. Nothing in the record of the Virginia proceeding suggests that Respondent waited until she had earned the funds before treating them as her own.

Thus, based on Respondent's admitted violation of Virginia Rule 1.15(b)(5) and her own description of her use of the funds, we find that Disciplinary Counsel has proven by clear and convincing evidence that if Respondent's conduct had occurred in the District of Columbia, it would have been considered "unauthorized use of entrusted funds" as that phrase is used in the our misappropriation cases.[7]

[7] Without Respondent's admission that she misappropriated funds, however, the record alone would not support such a finding in the District of Columbia. Instead, as discussed below, the facts support a trust account violation and commingling.

2. Respondent's Intentional Failure to Deposit Entrusted Funds in Trust Is Not Clear and Convincing Evidence of Reckless or Intentional Misappropriation.

Having shown that Respondent engaged in unauthorized use of entrusted funds, Disciplinary Counsel must show that her misappropriation was reckless or intentional to warrant the substantially different discipline of disbarment. Disciplinary Counsel asserts that Respondent "did not hold any portion of that advanced fee in trust," and that her failure to "hold the unearned fees in trust cannot be described as simple negligence because her own retainer agreement made it clear that she intended to hold the funds out of trust." ODC Statement at 6; *see also id.* at 3 n.2 (arguing that Respondent "stipulated that her conduct constituted failure to hold client property in trust, *also known as misappropriation*, in violation of Virginia Rule 1.15(a)(1)."") (emphasis added).

But the mere "failure to hold unearned fees in trust" is not misappropriation—it is a violation of the requirement in both Virginia Rule 1.15(a)(1) and D.C. Rule 1.15(a) that entrusted funds "shall be kept" in a trust account. *See, e.g.*, *In re Shearer*, VSB Dkt. No. 18-052-109900, at 9 (Va. State Bar, Disciplinary Board, July 3, 2018) (failure to deposit flat fee into trust account violated Virginia Rule 1.15(a)(1)); *In re Davey*, VSB Dkt. No. 14-090-099262, *et al.*, at 6 (Va. State Bar, Disciplinary Board, Oct. 16, 2015) (Rule 1.15(a)(1) requires depositing advanced fees into a trust account); *see also In re Edwards*, 808 A.2d 476, 482 (D.C. 2002) (commingling client money with the lawyer's money in the operating account is not misappropriation; but, the respondent "engaged in misappropriation the instant she

allowed the balance in her operating account to fall below the amount given to her by" the client); *Micheel*, 610 A.2d at 233.[8]

Disciplinary Counsel cites no authority that contradicts *Micheel* or *Edwards*, or otherwise supports the proposition that disbarment is the proper sanction in the District of Columbia for the failure to keep entrusted funds in a trust account. Notably, Disciplinary Counsel did not charge misappropriation in two recent cases (*In re Klass* and *In re McDaniel*) where the respondent accepted a flat fee and failed to deposit the fee into a trust account before the fee was earned, and Disciplinary Counsel did not contest the Hearing Committee's recommendations that each respondent receive a Board reprimand for commingling (in violation of Rule 1.15(a)) and failure to hold an advance fee in trust until earned (in violation of Rule 1.15(e)). *In re McDaniel*, Board Dkt. No. 17-BD-076 (BPR Apr. 5, 2018); *In re Klass*, Board Dkt. No. 13-BD-041 (BPR Dec. 22, 2014).

As noted above, Respondent admitted to misappropriation, but the stipulated facts in the Virginia proceeding do not address her state of mind when engaging in the unauthorized use of entrusted funds. Such facts are necessary to establish intentional or reckless misappropriation. *See, e.g.*, *Anderson I*, 778 A.2d at 338 (setting forth the five "hallmarks" of reckless misappropriation that "reveal an intent

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[8] Although the record in Virginia is silent about where Respondent deposited the fee advance, finding only that "Respondent did not deposit these funds into an attorney trust account," (Stip. ¶ 4), in her briefing before the Court, Respondent asserted that she deposited the funds at issue into her personal account. Respondent's Supplemental Response to Disciplinary Counsel's Opposition to Respondent's Motion for Identical Discipline, at 14. Thus, assuming for the sake of argument that her personal account held her own funds when she deposited entrusted funds, this misconduct constitutes commingling, not misappropriation.

by the attorney 'to deal with and use funds escrowed for clients as his own' or an unacceptable disregard for the security of client funds"); *Addams*, 579 A.2d at 199 (referring to intentional misappropriation as the "knowing and intentional misuse of his client funds"). When Disciplinary Counsel establishes only the unauthorized use of entrusted funds, but fails to establish that the misappropriation was intentional or reckless, "'then [Disciplinary] Counsel proved no more than simple negligence.'" *Anderson I*, 778 A.2d at 338 (quoting *In re Ray*, 675 A.2d 1381, 1388 (D.C. 1996)). Here, the Virginia record, with Respondent's admissions, established unauthorized use only, and thus Disciplinary Counsel "proved no more than simple negligence." *Id*.[9] The typical sanction for negligent misappropriation is a six-month suspension. *See In re Evans*, 578 A.2d 1141 (D.C. 1990).

B. Disciplinary Counsel Failed to Prove by Clear and Convincing Evidence that Respondent's Misconduct in Virginia Constituted Flagrant Dishonesty Warranting Disbarment.

Disciplinary Counsel argues that Respondent should be disbarred because she "repeatedly lied in order to give the impression that she was licensed to practice law in Virginia." ODC Statement at 9. In support of this argument, Disciplinary Counsel argues that Respondent "was dishonest to a court, the Commonwealth's Attorney, and other attorneys," and that she "repeatedly misrepresented that other attorneys

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[9] In her Supplemental Response (filed with the Court) at 14, Respondent asserts that her "retainer was based upon an old rule that respondent did not know had changed." This appears to be a concession that Respondent failed to stay abreast of the law regarding the handling of advance fees, and an assertion that her misconduct resulted from a mistake of law. We do not consider whether Respondent's purported mistake of law could be characterized as "recklessness" under *Addams* and its progeny because Disciplinary Counsel has not made that argument, and thus the issue has not been developed before the Board.

had previously agreed to serve as local counsel but that arrangements had unexpectedly fallen through." *Id.*

The record in the Virginia case shows that Respondent made a misrepresentation when she used her D.C. Bar number as her purported Virginia State Bar number on the Appearance of Counsel form she filed in the M.J. matter. While no misrepresentation should be tolerated, Disciplinary Counsel overstates the scope of Respondent's misrepresentation in Virginia as set forth in the stipulated facts. As noted above, the stipulated facts in the Virginia proceeding describe a difference of recollection between Respondent and potential local counsel over whether either had agreed to serve in that role. There is no finding that Respondent made misrepresentations when she said that each had agreed to serve as local counsel. This can be contrasted with Respondent's misrepresentation about her Bar membership, where the stipulated facts make clear that "Respondent affirmatively misrepresented her status as a non-Virginia attorney when she filed her Appearance of Counsel." Stip. ¶ 28.

Disciplinary Counsel argues that Respondent should be disbarred for "wide-ranging" dishonesty similar to that in *In re Baber*, 106 A.3d 1072 (D.C. 2015) (per curiam). We disagree. In *Baber*, the respondent was disbarred because he

> failed to competently represent his client; lied to the court; pressured his client to pay an excessive fee that she had not agreed to pay; improperly used confidential information from his client to make knowingly false accusations of fraud against his client in several pleadings; reiterated those false accusations during the disciplinary process; and failed to show remorse during the disciplinary process.

Id. at 1076-77. The *Baber* Court found protracted misconduct (lasting more than two years) that included knowing false statements to the client, the court and Disciplinary Counsel. *Id.* at 1077. The Court found the respondent's repeated dishonesty "particularly disturbing" because his false statements were driven by a desire for personal gain and were part of an effort to obtain an unreasonable fee from the client, and he knowingly made false accusations that his client had engaged in fraudulent conduct. *Id.* The misconduct in *Baber* is far more egregious than the misconduct set forth in the Virginia proceeding, where Respondent misrepresented her status as a Virginia lawyer, but then told the truth when asked. In addition, Respondent's misconduct occurred over no more than a month, and there is no evidence that her misconduct was driven by a desire for personal gain.

Disciplinary Counsel fares no better in arguing that *In re Cleaver-Bascombe*, 986 A.2d 1191 (D.C. 2010) (per curiam) supports disbarment here. In *Cleaver-Bascombe*, the respondent filed a fraudulent CJA voucher, and then testified falsely during her disciplinary hearing, resulting in her disbarment. *Id.* at 1200-01. We recognize that "lawyers have a greater duty than ordinary citizens to be scrupulously honest at all times, for honesty is basic to the practice of law," *id.* at 1200, and that Respondent was not scrupulously honest at all times. However, her dishonesty pales in comparison to that in *Baber* and *Cleaver-Bascombe*, and thus her dishonesty does not warrant disbarment.

C. Disciplinary Counsel Failed to Prove by Clear and Convincing Evidence that Respondent's Unauthorized Practice of Law Warrants Disbarment.

Disciplinary Counsel argues that the Court has "disbarred attorneys who have engaged in the unauthorized practice of law." Statement Regarding Reciprocal Discipline (filed with the Court) at 8. Disciplinary Counsel cites *In re Barneys*, 861 A.2d 1270 (D.C. 2004), when the Court imposed reciprocal discipline of disbarment for a lawyer who engaged in the protracted unauthorized practice of law in Maryland and extensive dishonesty. *Id*. at 1274 (referring to the Maryland's finding that the respondent's misconduct was "deliberate and persistent"). We do not believe that *Barneys* supports Disciplinary Counsel's contention that Respondent's unauthorized practice of law, standing alone, would warrant her disbarment.

D. Disciplinary Counsel Failed to Prove by Clear and Convincing Evidence That a 15-Month Suspension is Outside the Range of Sanction That Respondent Would Have Received Had Her Misconduct Occurred in the District of Columbia.

We have concluded that Disciplinary Counsel has not proven that Respondent should be disbarred for her misappropriation, dishonesty, and unauthorized practice of law when each is viewed in isolation. We next consider the sanction to be imposed in the District of Columbia for Respondent's misconduct when viewed as a whole. *See* D.C. Bar R. XI, § 9(h) (discipline must be consistent with that imposed cases involving comparable misconduct and must not be otherwise unwarranted). As is often the case, we have been unable to find a precisely comparable case. The cases cited by Disciplinary Counsel, and discussed above, do not support the imposition of disbarment even considering all of Respondent's misconduct in

Virginia. Based on our review of relevant precedent, we conclude that the appropriate range of sanctions for Respondent's misconduct would be a one to two-year suspension.

Before discussing the precedent, we also note that we took judicial notice of facts not included in the Virginia record: that at the time of the Virginia misconduct, Respondent had already been sanctioned in the District of Columbia for the unauthorized practice of law elsewhere, receiving a public censure in 2014, and an informal admonition in 2006. *See In re Styles-Anderson*, Board Dkt. No. 17-ND-010, at ¶ 13 (H.C. Rpt. Apr. 2, 2018) (recommending imposition of negotiated discipline), *recommendation approved, In re Styles-Anderson*, 184 A.3d 846 (D.C. 2018) (per curiam). In addition, during the events at issue, Respondent was also engaging in the unauthorized practice of law in Maryland for which she was recently suspended for one year, with fitness. *See id.* at ¶ 4(b).

1. Relevant Cases.

In *In re Ray*, 675 A.2d 1381 (D.C. 1996), the respondent, admitted to practice in the District of Columbia only, represented a client in a probate matter in Maryland and paid himself from estate assets without first obtaining the required court approval. The Court suspended the respondent for six months for his negligent misappropriation, unauthorized practice of law, collecting an illegal fee, and handling a matter he was not competent to handle. *Id.* at 1386-89. Respondent's misconduct here is more serious than the misconduct in *Ray*, where there was no

evidence that the respondent misrepresented his Bar membership on a court filing or had been previously disciplined for engaging in the unauthorized practice of law.

Respondent's misconduct is also similar to, but more serious than the misconduct in *In re Soininen*, 853 A.2d 712 (D.C. 2004), where the respondent was suspended for six months for engaging in the repeated unauthorized practice of law while serving a disciplinary suspension, and misrepresenting her status as a lawyer to clients and to numerous immigration tribunals. *Id.* at 714. However, she did not engage in misappropriation, and did not engage in the unauthorized practice of law after being twice disciplined for the unauthorized practice of law, as Respondent has done here.

The respondent in *In re Kennedy*, 605 A.2d 600 (D.C. 1992) (per curiam) displayed some of the same recalcitrance on the issue of unauthorized practice of law that we see here. In *Kennedy*, the respondent engaged in the repeated unauthorized practice of law in Maryland. He continued to engage in the unauthorized practice of law even after he certified to the Montgomery County Committee on the Unauthorized Practice of Law that he would not do so. *Id.* at 602. The respondent in *Kennedy* had a prior disciplinary history, including the unauthorized practice of law, and was suspended for nine months with a fitness requirement. Unlike Respondent here, *In re Kennedy* did not involve misappropriation.

We recognize that *Ray*, *Soininen* and *Kennedy* each involved lesser sanctions than a one-year suspension which we conclude would have been the bottom of the

sanction range if Respondent's misconduct had occurred here. However, as noted above, none of those cases involved misappropriation, repeated unauthorized practice of law *and* affirmative false statements about one's Bar status, and thus considering all those facts, we conclude that applying *Ray*, *Soininen* and *Kennedy* to the facts here, would have warranted at least a one-year suspension.

In setting the upper end of the range at two years, we begin our review with *In re Midlen*, 885 A.2d 1280, 1291-92 (D.C. 2005), where the respondent was suspended for 18 months for his negligent misappropriation, failure to render a timely accounting, dishonesty toward the client, and failure to follow the client's direction. Although *Midlen* did not involve the unauthorized practice of law, it involved negligent misappropriation and dishonesty, both serious violations that are present here.

We also find that Respondent's misconduct was similar to that in *In re Boykins*, 999 A.2d 166 (D.C. 2010), where the respondent was suspended for two years with fitness for negligent misappropriation, false statements to Disciplinary Counsel during its investigation, failing to keep records of his handling of entrusted funds, and failing to promptly pay third parties. Although Respondent has not made false statements to Disciplinary Counsel, we are troubled by her repeated, and almost seemingly routine unauthorized practice of law.

Based on this review, we conclude that Respondent's 15-month suspension imposed in Virginia is within the range of sanctions that she would receive had the misconduct occurred here.

2. Respondent's *Kersey* Mitigation Claim is Moot.

Respondent argues in the alternative that if the Court finds that she engaged in at least reckless misappropriation, and should be disbarred under *Addams*, she is entitled to mitigation under *In re Kersey*, 520 A.2d 321 (D.C. 1987). Because we agree with Respondent that the Court should impose identical reciprocal discipline, Respondent's alternative *Kersey* argument is moot.

E. Respondent's Suspension Should Be Effective as of September 15, 2017.

The Court recently approved a Petition for Negotiated Discipline in a separate matter involving Respondent, suspending her for a year, *nunc pro tunc* to September 15, 2017. *Styles-Anderson*, 184 A.3d 846. The usual practice in cases involving reciprocal and original matters is to recommend the sanction to be imposed if the reciprocal and original matters were before the Board simultaneously. *See In re Scott*, 19 A.3d 774, 782 (D.C. 2011) ("the sanction imposed in consolidated cases [should not] be arrived at rigidly or mechanically by establishing a separate sanction in each matter and then adding them together to arrive at the discipline[,]" but should "recommend a single 'sanction [that] . . . addresses both the original and reciprocal discipline matters'" (quoting Board Report)).

We have not undertaken that analysis because, in the negotiated discipline case, the parties agreed that the sanctions imposed in the two cases would run concurrently, *nunc pro tunc* to September 15, 2017. *Styles Anderson*, Board Dkt. No. 17-ND-010, H.C. Report at 6, ¶ 12 ("Respondent and Disciplinary Counsel have agreed that the sanction in this matter should be a one-year suspension, concurrent

to any other disciplinary suspension Respondent may be serving in this jurisdiction at the time the Court imposes the sanction in this matter . . . ."); *see also* Disciplinary Counsel's Statement Regarding Effective Date of Negotiated Discipline at 2 ("Any final discipline in the reciprocal matter (17-BG-228) will presumably be imposed effective September 15, 2017. Thus, it is reasonable and fair that the negotiated sanction in this matter run concurrent with that anticipated effective date.").

The Court's opinion accepting the negotiated discipline acknowledged the parties' agreement that the sanctions imposed in the two cases would run concurrently and accepted the Hearing Committee's recommendation. *See Styles-Anderson*, 184 A.3d at 847 (approving a negotiated "one-year suspension, concurrent to any other disciplinary suspension that [Respondent] may be serving on the date of [the Court's opinion], with reinstatement conditioned upon demonstrating fitness to practice law . . . and payment of the agreed upon restitution"); *see also id*. at 848 n.3 (noting that at the time of the [Court's decision], Respondent was suspended pending final disposition in this matter).

Because of the unusual posture of this case, we are constrained by the parties' agreement as reflected in the Court's opinion in the negotiated case, and thus recommend that the 15-month suspension in this reciprocal matter be imposed *nunc pro tunc* to September 15, 2017, the date she filed the affidavit required by D.C. Bar R. XI, § 14(g). *In re Slosberg*, 650 A.2d 1329 (D.C. 1994); *see, e.g.*, *In re Jaffe*, 157 A.3d 210 (D.C. 2017) (per curiam); *In re Worsham*, 114 A.3d 982 (D.C. 2015) (per curiam).

CONCLUSION

We recommend that the Court impose identical reciprocal discipline and that Respondent be suspended for 15 months, *nunc pro tunc* to September 15, 2017, and that, per the sanction imposed in her negotiated discipline case, she be required to prove her fitness to practice and make restitution required in the negotiated discipline case prior to reinstatement.

BOARD ON PROFESSIONAL RESPONSIBILITY

By: Lucy Pittman
Lucy Pittman

All Board members concur in this report and recommendation, except Ms. Smith, who did not participate.